

KOSTELANETZ & FINK, LLP
7 WORLD TRADE CENTER, 34TH FLOOR
NEW YORK, NEW YORK 10007

WASHINGTON, DC OFFICE
601 NEW JERSEY AVENUE, NW, SUITE 260
WASHINGTON, DC 20001
TEL: (202) 875-8000
FAX: (202) 844-3500

TEL: (212) 808-8100
FAX: (212) 808-8108
www.kflaw.com

MEMO ENDORSED

February 24, 2021

BY ECF

Honorable Lewis A. Kaplan
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: **In re: Customs and Tax Administration of the Kingdom of Denmark
(SKAT) Tax Refund Litigation, 18-MD-2865 (LAK)**

Dear Judge Kaplan:

By order dated November 20, 2018 (Dkt. No. 30) (the "Appointment Order"), this Court appointed Mark D. Allison of Caplin & Drysdale, Chartered, as Lead Counsel on behalf of the defendants in the actions consolidated or coordinated pursuant to the October 3, 2018 Order (the "Transfer Order") of the U.S. Judicial Panel on Multidistrict Litigation (the "Defendants").

Mr. Allison has notified the Defendants that he wishes to withdraw from his role as lead counsel due in large part to the expectation of decreased engagement in this litigation by his clients in light of the financial costs borne by them to date. Illustrative of this is the motion pending before the Court by Mr. Allison to withdraw from representation of one client and related pension plan defendants who are unable to continue funding their share of legal fees (*see* Dkt. Nos. 514-516). Mr. Allison has asked the defense group to put forth substitute lead counsel for the Court's consideration.

Alan Schoenfeld, a partner at Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale"), and Sharon McCarthy, a partner at Kostelanetz & Fink, LLP ("Kostelanetz"), seek the Court's approval to serve as co-lead counsel on behalf of the Defendants. We have notified counsel for SKAT as well as counsel for the Defendants of our intention to make this application, and we are unaware of any opposition to our appointment.

In this action, WilmerHale represents ten defendants in eighteen cases pending in the Southern District of New York, and Kostelanetz represents fifteen defendants in twenty-three cases pending in the Southern District of New York. Attached as Exhibit A is a list of each of the defendants represented by our two law firms and the corresponding case numbers.

Mr. Schoenfeld and Ms. McCarthy, together with their respective law firms, are qualified to serve as co-lead counsel in the consolidated action.

Ms. McCarthy has been a partner at Kostelanetz since 2006, and her practice focuses on litigation, including tax controversy, and white-collar criminal defense. Prior to joining Kostelanetz, Ms. McCarthy served for twelve years as an Assistant United States Attorney in the Southern District of New York, where she litigated and supervised complex criminal matters. She also has extensive trial experience and is a Fellow of the American College of Trial Lawyers. A team of lawyers and paralegals has been working closely with Ms. McCarthy on this matter. Caroline Ciraolo, who has led the D.C. office of Kostelanetz since joining the firm in 2017, previously served as Acting Assistant Attorney General of the Tax Division of the U.S. Department of Justice (DOJ). Before the DOJ, Ms. Ciraolo was Chair of the Tax Controversy and Litigation practice group of Rosenberg Martin Greenberg LLP in Baltimore, Maryland. She is a Fellow and Officer of the American College of Tax Counsel. Associate Nicholas Bahnsen joined Kostelanetz in 2019 from the Tax Division of DOJ, where he served for four years as a trial attorney. Mr. Bahnsen has significant experience with civil litigation and trials. Associate Daniel Davidson joined Kostelanetz in 2019 after serving for three years as an Assistant District Attorney in the Kings County District Attorney's Office. Attached as Exhibit B are each of these attorneys' public profiles.

Mr. Schoenfeld is a partner at WilmerHale with extensive civil litigation experience in state and federal courts. His practice focuses on commercial disputes and defense of complex class actions, with a particular focus on financial institutions. He has represented a diverse group of clients in cases involving securities, antitrust, bankruptcy, RICO, consumer protection, contract and tort claims, among others. Before joining the firm, he clerked for Hon. Denise Cote of the Southern District of New York and Hon. Sonia Sotomayor of the Second Circuit. Michael Bongiorno is a partner at WilmerHale and is the co-chair of the Securities Litigation and Enforcement group. Mr. Bongiorno has served as first-chair lead defense counsel and argued motions to dismiss in dozens of securities class action and derivative suits across the country, as well as appeals affirming dismissals in federal and state courts. Mr. Bongiorno also has extensive experience leading internal investigations and securities regulatory and enforcement matters, including matters before the Securities and Exchange Commission, the Department of Justice and FINRA. Andrew Dulberg is a partner at WilmerHale. He has a diverse litigation practice with an emphasis on high-stakes, complex commercial disputes and securities and financial services litigation. Allison Stoddart is a counsel at WilmerHale who focuses her practice on representing individuals, corporations and financial institutions in complex commercial litigation; white-collar criminal defense and related civil and administrative matters; enforcement proceedings with the SEC, CFTC and FINRA; and internal, grand jury and state attorneys general investigations. Julia Pilcer is a counsel at WilmerHale whose practice focuses on complex litigation matters, including securities, antitrust, and contract disputes in state and federal court and representing individuals and financial services clients in enforcement proceedings. This team of attorneys is supported by a team of associates. Attached as Exhibit C are each of these attorneys' public profiles.

For the past ten months, Mr. Schoenfeld and Ms. McCarthy have worked closely with Mr. Allison to lead discussions with counsel for SKAT on many issues related to discovery and case management. Mr. Schoenfeld and Ms. McCarthy have been able to work and coordinate with other defense counsel to ensure that their clients' interests are adequately represented. Mr.

Allison supports the appointment of Mr. Schoenfeld and Ms. McCarthy as joint lead defense counsel given our deep familiarity with the issues in this case and leadership role during this transition.

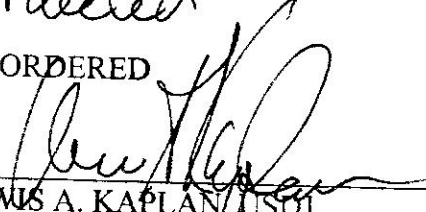
We thank the Court for its consideration of this request.

Respectfully submitted,

/s/ Sharon L. McCarthy
Sharon L. McCarthy
Kostelanetz & Fink LLP

/s/ Alan E. Schoenfeld
Alan E. Schoenfeld
Wilmer Cutler Pickering Hale and Dorr LLP

Cc: All counsel of record via ECF.

Granted
SO ORDERED

LEWIS A. KAPLAN, USDJ
2/25/21